

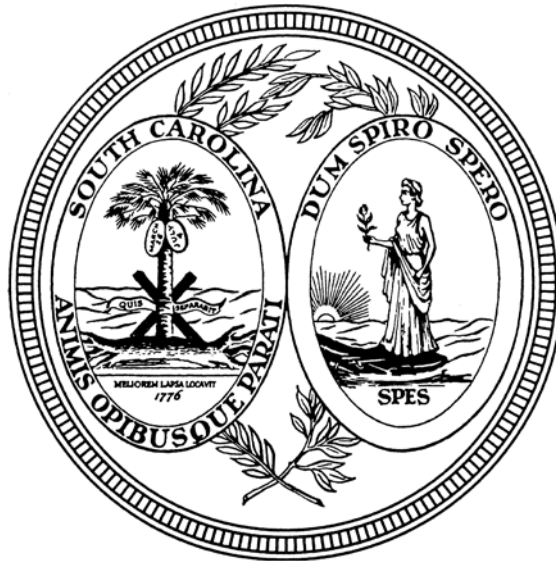


SOUTH CAROLINA GENERAL ASSEMBLY

# Legislative Audit Council

October 2007

## A REVIEW OF THE SOUTH CAROLINA GUARDIAN AD LITEM PROGRAM



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# Legislative Audit Council

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## **A REVIEW OF THE SOUTH CAROLINA GUARDIAN AD LITEM PROGRAM**

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# Synopsis

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Members of the General Assembly requested the Legislative Audit Council to conduct an audit of the Guardian ad Litem (GAL) program administered by the Governor's Office. The GAL program recruits, trains, and supervises volunteers who represent the best interests of children involved in child abuse and neglect cases. We reviewed the program's performance in achieving its mission and issues related to program operations and management. We found that the program fills an important role for the children it serves. Our findings and suggested improvements are summarized below.

- The GAL program has received increased funding in recent years; however, the program will need additional resources if it is to succeed in its mission to serve more children.
- Since FY 04-05, the program has been funded in part by a portion of funds due in interest on refunds to taxpayers. This funding is not consistent and does not allow the GAL program to budget and plan expenditures appropriately. It could also be inequitable to taxpayers.
- Approximately half of the children who need a guardian do not receive one from the program. According to GAL records, in FY 05-06, the program provided guardians for approximately 51% of the cases for which it received a request. The program's goal is to accept 90% of potential cases.
- The GAL program has not adequately emphasized recruiting. Although the program has recognized the need for recruiting, it has not implemented formal recruiting plans or consistently allocated resources to oversee and/or target resources to the recruiting effort. Other programs, such as Richland County CASA and the North Carolina GAL program, have identified successful approaches to recruiting.
- Staff of the GAL program serve as guardians ad litem in a substantial number of cases. The use of staff as guardians is not in accord with the program's mission and should be phased out. When staff serve as guardians, they have less time to focus on recruiting, training, and supervising volunteers.
- The GAL program should improve the performance reporting in its annual accountability report. The program has not reported its progress on key measures, such as the percentage of child abuse and neglect cases for which the program provides volunteers.

- The GAL program does not have a comprehensive policy for determining which cases should have priority when there are not enough volunteers for all of the cases. Without clear guidelines, program staff may be inconsistent and could make case decisions that are not based on appropriate priorities.
- When volunteers are not available, judges appoint attorneys to serve as guardians ad litem. The attorneys are appointed involuntarily from lists of those available and are not required to have any specialized training or experience in abuse and neglect cases. The federal Child Abuse Prevention and Treatment Act requires that attorneys or court-appointed special advocates who are appointed as guardians ad litem receive training appropriate to their role.
- The statutory authority of the Guardian ad Litem program to supervise volunteer guardians is unclear. It is not clear whether the program has the authority to dismiss guardians who do not follow program guidelines. Litigation addressing its authority has been costly to the program.
- The GAL program does not meet national standards for the supervision of volunteer guardians by staff. Staff who supervise large numbers of volunteers may not be able to provide the comprehensive guidance and support that can improve volunteer retention and quality of service.
- The GAL program has recently obtained additional resources to compensate attorneys who represent volunteer guardians in court. The program should ensure that it compensates attorneys consistently based on workloads.
- The GAL program did not have a comprehensive quality control process to ensure that employees and volunteers follow program policies for management of children's cases. In 2007 the program began to implement a policy for auditing its files. This process should be beneficial. However, we recommend some changes to the policy to improve effectiveness and increase accountability.
- The program has not maintained reliable data about program activities. There are inadequate controls to ensure that data in the program's information system is complete and accurate. Some counties have not maintained adequate records of program activity in the information system.
- The majority of the staff of the GAL program are employed on a time-limited basis. The use of time-limited positions for the program is inappropriate and may hinder its efforts to recruit qualified staff.



# Introduction, Background, and Program Funding

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## Audit Objectives

Members of the General Assembly requested the Legislative Audit Council to conduct an audit of the Guardian ad Litem (GAL) program administered by the Office of Executive Policy and Programs (OEPP) in the Governor's Office. The requesters wanted to know whether the program's funds were being used in the best interest of the children that it serves. Our audit objectives are listed below.

- Review the background of the Guardian ad Litem program and its sources of funding.
- Review the Guardian ad Litem program's performance in fulfilling its mission.
- Review the program's human resources management of staff and volunteers.
- Review program operations to determine efficiency and whether there are appropriate management and accountability controls.

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## Scope and Methodology

We reviewed the state Guardian ad Litem program which recruits, trains, and supervises volunteers who represent the best interests of children in abuse and neglect cases in 45 counties. We did not review Richland County CASA, the guardian ad litem program for Richland County, which is independent of the state program. We also did not review the use of guardians ad litem in private cases, such as custody cases. The period of review was generally FY 04-05 and FY 05-06; we also used information from FY 06-07 when available.

Our sources of information included the following:

- GAL accounting and personnel records.
- Policies and procedures, reports, and planning documents.
- S.C. Code of Laws and records of relevant court cases.
- Performance measures and data on program results.
- Contracts and other administrative records, such as leases.
- Interviews with GAL program staff, volunteers, and staff in other state agencies and private organizations.

We used state law governing the program as the primary criteria to assess performance. We also considered national standards for court-appointed special advocates (CASA), conditions in other states and jurisdictions, and principles of sound business practice. We identified concerns with the program's information system and concluded that data from the system is not reliable (see p. 23). However, we also considered other sources of evidence

relevant to our objectives and found that evidence was sufficient to confirm the conditions that we found. The inadequacies of the program's information system did not allow us to precisely determine the magnitude of some of the conditions we identified.

We reviewed internal controls over the program's information system, performance measures, use of legal services, case management and supervision, recruitment activities, and human resources management. This audit was conducted in accordance with generally accepted government auditing standards.

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## Background and History

A guardian ad litem is a person appointed by a court to represent the best interests of children in court proceedings when they are at risk of being overlooked. In 1974, the U.S. Congress passed the Child Abuse Prevention and Treatment Act, which required states to appoint a guardian ad litem in all abuse and neglect proceedings in order to receive federal funding and assistance. Since 1977, state law has required that children must be appointed legal counsel and a guardian ad litem in all child abuse and neglect proceedings (S.C. Code §20-7-110(1)).

The federal government left implementation of guardian ad litem requirements to the states, and many states delegated this function to local jurisdictions. There is no dominant national pattern for providing guardian services. Many states administer services locally. Approximately 11 states, including South Carolina, operate their local programs through statewide administration.

Initially, attorneys served as guardians ad litem. In the late 1970s, judges in Seattle, Washington, began using trained volunteers or court-appointed special advocates (CASAs) to serve as guardians ad litem. The National CASA Association provides support and technical assistance for programs using volunteers. Currently, states use a variety of models to provide guardian services. South Carolina established its program using volunteer guardians ad litem. Originally funded by a grant from the Joint Legislative Committee on Children, the program operated from the University of South Carolina and began its initial operation in four judicial circuits. Through implementation of a five-year plan, the program was operational in 45 counties by FY 88-89. Richland County had a separate volunteer program that started prior to the state program (1983) and has remained separate from the state program.

In 1988, the General Assembly enacted legislation to establish the South Carolina Guardian ad Litem (GAL) program “. . .to serve as a statewide system to provide training and supervision to volunteers who serve as court-appointed special advocates for children in abuse and neglect proceedings within the family court. . .” (§20-7-121). The GAL program is administered by the Governor’s Office. The program has 34 offices in counties throughout the state (some county offices are combined) and a central office in Columbia in the capitol complex. There are approximately 78 GAL employees, many of whom work less than full-time. For FY 05-06, the program had 1,328 active volunteers and served approximately 6,849 children. See Chart 1.1 for a description of the duties of the volunteer guardians.

The GAL program provides volunteer guardians for child abuse and neglect cases. Private guardians ad litem are appointed by the courts in other types of cases involving contested issues of custody, visitation, delinquency, and other matters. Guardians in these cases are usually paid by the parties involved. The GAL program has no involvement with private guardians.

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**Chart 1.1: What Does a Volunteer Guardian ad Litem Do?**

Volunteers independently investigate the facts of a child abuse and neglect case by reviewing case records and interviewing and maintaining contact with the child or children involved. They also contact and interview others including:

- DSS personnel.
- Parents of the children.
- Medical personnel.
- School personnel.
- Relatives or any other person involved.

Volunteers develop a report for the Family Court recommending what is in the child’s best interest. The judge orders what will happen in the case, and the volunteers monitor the progress of the children and family. Volunteers are required to have regular contact with their children and are asked to stay with a case for as long as it is open. Volunteers must maintain the confidentiality of information about cases with which they are involved.

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## Funding for the GAL Program

The Guardian ad Litem Program has received increased funding in recent years; however, the program will need additional resources if it is to succeed in its mission to recruit, train, and supervise more volunteer advocates for children. Although S.C. Code §20-7-129 states that “the General Assembly shall provide the funds necessary to carry out” the program’s statutory duties, the program has struggled to find the resources to fulfill its mission. As shown in Table 1.2, the GAL program has obtained funding from multiple sources and has not had a consistent and stable source of funds. Sources of funding for the program have included the following:

- State appropriations — beginning in FY 05-06, state appropriations have comprised a greater percentage of program funding.
- Federal funds for attorney compensation — received annually through a contract with DSS and used to pay attorneys who represent volunteers.
- Grants from federal sources — primarily grants from Victims of Crime Act (VOCA) applied for by the program and used primarily for information technology.
- National CASA grants — annual grants used for public relations and administrative needs.
- Interest on Taxpayer Refunds — see p. 5.

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**Table 1.2: GAL Program Revenues**

SOURCE	FY 03-04	FY 04-05	FY 05-06
State Appropriations	\$286,154 (12%)	\$242,324 (9%)	\$1,017,852 (34%)
Interest from Taxpayer Refunds	\$0 (0%)	\$1,502,611 (59%)	\$1,832,047 (61%)
State Victim Assistance Funds	\$900,054 (40%)	\$500,000 (20%)	\$0 (0%)
Federal Attorney Comp Funds	\$111,287 (5%)	\$111,287 (4%)	\$111,288 (4%)
Other Federal funds/grants	\$927,227 (41%)	\$161,583 (6%)	\$0 (0%)
National CASA grant	\$37,570 (2%)	\$47,173 (2%)	\$43,720 (1%)
TOTAL	\$2,262,292 (100%)	\$2,564,978 (100%)	\$3,004,907 (100%)

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## Funding for FY 06-07 and FY 07-08

GAL program revenues were approximately \$3.7 million for FY 06-07. In addition to funds from the same sources as in FY 05-06, the program received a \$150,000 grant for attorney compensation from the South Carolina Bar Foundation through its Interest on Lawyer Trust Accounts (IOLTA) program. For FY 07-08, the program has received a VOCA grant to upgrade its computer technology. The program’s state appropriation for FY 07-08 is \$1,248,386. The GAL program will also receive \$360,000 from the

Commission on Indigent Defense to compensate attorneys who represent guardians (see p. 19).

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## Interest from Taxpayer Refunds

Beginning in FY 04-05, there has been a proviso in each year's appropriations act granting the GAL program a portion of the funds that are to be paid by the Department of Revenue (DOR) for interest due on tax refunds. S.C. Code §12-54-25 states that DOR is to collect interest on tax underpayments and pay interest on tax overpayments based on underpayment rates used by the federal government. For FY 06-07, the interest rate was 8%. However, since FY 04-05, the General Assembly, in appropriations act provisos, has instructed the DOR to pay less interest on refunds owed taxpayers; DOR is to reduce the interest rate payable on overpayments by two percentage points and pay this interest due taxpayers to the GAL program.

This funding is not consistent and does not allow the GAL program to budget and plan its expenditures appropriately. The amount of revenues received by the program varies and cannot be accurately predicted. For example, the monthly amount due to the GAL program in FY 06-07 through May 2007 has varied from \$96,082 to \$212,677. Also, in FY 06-07, DOR settled a dispute with a corporate taxpayer that challenged the amount its refund interest was reduced. According to a DOR official, DOR paid the taxpayer \$322,810, which had to be paid back by the GAL program.

In 2007, the GAL program requested in the budget process that the proviso providing the taxpayer interest funds be amended to cap the program's funding from this source at \$1,000,000 annually. The program requested general appropriations to replace the lost revenue. However, the General Assembly has continued the same proviso for FY 07-08.

As shown in Table 1.3, the majority of the program's expenditures (77% in FY 05-06) are for employee salaries and benefits. Unstable program funding can adversely affect the GAL program's ability to succeed at its mission of recruiting, training, and supervising volunteers. Also, paying a lower interest rate to taxpayers due refunds than the rate the state collects from those who underpay their taxes, could be inequitable to taxpayers.

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**Table 1.3: GAL Program Expenditures**

SOURCE	FY 04-05	FY 05-06
Personal Service	\$1,418,949 (59%)	\$1,682,362 (61%)
Operating Expenses	\$634,080 (26%)	\$639,465 (23%)
Employer Contributions	\$365,818 (15%)	\$449,761 (16%)
TOTAL	\$2,418,847 (100%)	\$2,771,588 (100%)

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## Recommendation

1. The General Assembly should discontinue funding the Guardian ad Litem Program by reducing interest payments due to taxpayers who are owed refunds and replace these funds with annual appropriations.

# Program Mission

## Progress Toward Program Volunteer Goals

The GAL program's performance in providing guardians has fallen short of a program goal of staffing 90% of cases. According to the FY 05-06 accountability report, the GAL program accepted 1,385 new cases. This is approximately 51% of the 2,722 cases for which it received guardian requests. This figure includes both volunteer and staff cases (see p. 10). Cases not taken by the program are assigned to attorneys on each county's appointment list (see p. 14).

In FY 06-07, GAL regional supervisors conducted an internal review for each county. Each review resulted in a county plan. Thirty-five of the 45 county plans noted a need for an increase in volunteers. Some of the plans reflected a realization that recruiting enough volunteers to accept 90% of cases would take longer than the one-year period each plan covers. For example, Dorchester, Aiken, Beaufort, Clarendon, and Kershaw Counties were among the counties with FY 06-07 case acceptance goals set below the 90% statewide goal.

In addition to recruiting to increase the volunteer force, the program must also recruit to replace volunteers lost for various reasons including work or family commitments, dismissal from the program, or relocation. Data that the program has compiled shows most counties experienced a net loss in volunteers in 2005 and 2006 (see Table 2.1). Horry and York counties were the only counties to have a net gain for both years.

**Table 2.1: Volunteer Recruitment Status**

	NUMBER OF COUNTIES	
	2005	2006
Net Gain in Volunteers	8 (18%)	14 (31%)
Net Loss in Volunteers	28 (62%)	21 (47%)
Zero Change	9 (20%)	10 (22%)

A lack of program resources may have contributed to the inability to provide more volunteers. However, the program has not adequately emphasized recruiting (see p. 8).

Approximately half of the children who need a guardian do not receive one. The children not served by the trained volunteers or program staff are served by attorneys appointed to act as guardians ad litem. When staff act as guardians their recruiting time is reduced, creating a cycle of low recruiting, low volunteer count, and staff taking cases instead of recruiting (see p. 10). In some counties, an entire class of cases may routinely be deemed less

serious and sent back to court so that volunteers are free to work on the more serious cases.

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## Emphasis on Recruiting

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The South Carolina Guardian ad Litem program has not adequately emphasized recruiting. A focus on recruiting is necessary to increase the number of children served by volunteers in abuse and neglect cases.

The program's mission is to recruit, train and supervise volunteers. National CASA staff (see p. 2) identified the North Carolina Guardian ad Litem program and Richland County CASA as programs which have a strong record of successful recruiting. As of March 2007, Richland County had approximately 300 active volunteers and was able to staff 80% of abuse and neglect cases. Richland County CASA works with the University of South Carolina School of Law to obtain volunteers from the student body. The Richland County program also has used a peer recruiting model to target minority and male volunteers. Peer recruiting uses active volunteers to recruit new volunteers from their peer groups. Richland County uses social events and training conducted by current volunteers to encourage peer involvement. The program was recognized with the 2007 National CASA Association Diversity Leadership Award for taking a multi-pronged approach in its efforts to diversify all levels of the organization so that it is representative of the population it serves.

The North Carolina Guardian ad Litem Program sponsors AmeriCorps\*VISTA (Volunteers in Service to America) volunteers to assist in recruiting. These volunteers focus on recruiting volunteer guardians throughout North Carolina. According to an agency official, North Carolina has seen an increase in volunteers since the VISTA volunteers started recruiting volunteer guardians six years ago. Also, since the VISTA volunteers are not staff, this approach is very cost-effective.

The S.C. GAL program has recognized the need for recruiting, but has not emphasized recruiting or implemented formal recruiting plans. Most of the evidence of program recruiting activity is anecdotal. In the FY 05-06 county plans, each county identified the target number of volunteers that were needed, but the plans did not specify what the counties were going to do to address recruiting shortfalls. A program employee with part-time statewide public relations/recruiting responsibilities conducted a survey of counties in December 2006 to determine what public relations methods worked in various counties. However, just 25 of 45 (56%) of the counties responded to the survey. The program does not require regular reporting of efforts the counties use to recruit volunteers.



The program has not consistently allocated resources to oversee and/or target resources to the recruiting effort. As stated above, the program's current public relations position is part-time. It is funded by a grant that must be renewed each year. In June 2007, the program learned that it received enough grant funding to make the position full-time for the FY 07-08 year. However, funds for the position are not recurring. Beginning in October 2000, the state program employed four people in statewide positions who focused on recruiting and training volunteers around the state. According to an agency official, the program saw a significant improvement in volunteer recruitment. These positions were funded by a grant, with the hope that state funds would be allocated to the program when the grant ended. The program did not receive another grant and the positions were not funded from the state. Beginning in October 2001, the recruiters returned to other duties in the program or left. While most recruiting must be done on a local level, a central coordinator could help to facilitate communication of best practices, develop materials, make initial contacts to civic and corporate organizations, and make evidence-based suggestions to each county.

One of the goals in the GAL FY 07-08 strategic plan is to develop a recruiting team to work with the public relations coordinator by September 2007. The team would consist of current staff members. Current program staff could possibly accommodate this new responsibility by ceasing to act as guardians themselves (see p. 10).

The S.C. GAL program staff may think that they do not have the time or resources to focus on recruiting. When program staff are acting as guardians themselves, in addition to their role in training and supervising volunteers, recruiting may become a secondary activity. However, the lack of a targeted effort on recruiting significantly impedes the program from meeting its mission to serve children.

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## Recommendations

2. The Guardian ad Litem Program should allocate recurring funding to at least one full-time staff position dedicated to recruiting volunteers.
3. The Guardian ad Litem Program should track recruitment efforts and analyze the results.

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## Cases Held by Guarding ad Litem Program Staff

Staff of the S.C. Guardian Ad Litem (GAL) program serve as guardians ad litem in a substantial number of cases. The use of staff as guardians is not in accord with the program's mission and should be phased out.

It is not the mission of the GAL program to have staff members serve as guardians ad litem. Pursuant to S.C. Code §20-7-121, the purpose of the GAL program is to provide training and supervision to volunteers who serve as court-appointed special advocates for children in abuse and neglect proceedings within family court. When staff serve as guardians, they have less time to focus on recruiting, training, and supervising volunteers.

The standards for the National Court Appointed Special Advocate Association (NCASA) state that the staff of court-appointed special advocate programs should not serve as guardians ad litem except in limited circumstances. According to its director, the Richland County CASA program (see p. 2) does not use staff as guardians ad litem.

Due to data limitations (see p. 23), it is not possible to precisely determine the number of cases in which GAL program staff, instead of volunteers, act as guardians. However, a variety of sources of information provided by the program show that the use of program staff as guardians ad litem is widespread.

- According to the Guardian ad Litem program's FY 06-07 county plans, program staff handled 201 cases at the time data was collected for the plans.
- The Guardian ad Litem program conducted a survey of its county offices. The counties reported that, as of June 5, 2007, 280 (13%) of the state's guardian ad litem cases were being handled by program staff.
- The Guardian ad Litem program's database shows that, for the following calendar years, the following number of cases were handled by program staff. These numbers include cases handled at any time during the year, so they are more inclusive than the program's counts as of a particular date.
  - 2005 — 702 cases.
  - 2006 — 663 cases.
  - 2007 through May 7 — 479 cases.

Regardless of the source, all of the data shows that the practice of GAL program staff acting as guardians is widespread. However, the practice and extent of staffers taking cases is not uniform throughout the program. In certain counties (Fairfield, Kershaw, Lexington, Saluda, and Union), staff do not have cases. In other counties (Bamberg, Barnwell, Dorchester, and

Newberry), staff are responsible for the majority of cases. For example, in Bamberg County, for the period July 1, 2006, through March 31, 2007, program staff had responsibility for 11 of the county's 12 cases.

The GAL program's strategic plan includes a goal to reduce the number of guardian ad litem cases held by program staff to less than 10% of the program's case total. However, the program in 2006 created a position for a full-time caseworker, an employee whose job is to act as a guardian instead of recruiting, training, or supervising volunteers. The program has instituted the position of a full-time caseworker in the 8<sup>th</sup> Judicial Circuit to assist in relieving the circuit's overflow cases. In its FY 07-08 budget request, the program requested funding for four additional caseworker positions.

The GAL program director has stated that the use of program staff as guardians ad litem prevents the staff from concentrating on their mandated duties of recruiting, training, and supervising citizen volunteers. Although the program staff who serve as volunteer guardians are supposed to volunteer outside of their regular job hours, this is not official program policy. It is not feasible for program staff to carry their current caseload without having overlap between volunteer and work time. For example, according to program data, one program staff person handled 24 cases in three counties in 2006 and 2007, and another handled 52 cases in four counties during that period. Given their caseload, it is unlikely that these GAL employees could have adequately fulfilled their responsibilities of recruiting, training, and supervising volunteers.

In addition to keeping program staff from their statutory duties, some former guardians ad litem and current program staff have indicated that there are conflicts of interest in having program employees serve as guardians. For example, one county coordinator stressed the importance of having people involved in a case view the coordinator solely as a coordinator and not as a coordinator in some cases and a guardian in others.

The GAL county offices have not recruited enough volunteers to represent all children involved in abuse and neglect cases (see p. 7). As a result, program staffers have served as volunteer guardians. According to program staff, judges in two judicial circuits have assigned program staff to all abuse and neglect cases, or required them to take cases, due to their hesitation to appoint attorneys as guardians ad litem (see p. 14).

We attempted to verify these judicial policies. In our conversations, two judges of the 1<sup>st</sup> Judicial Circuit confirmed their policy of assigning all abuse and neglect cases to the staff of the GAL program and noted that the respective county programs have the ability to decline such appointments. In

the 8<sup>th</sup> Circuit, one judge denied having a policy of assigning all cases to the program staff, but another judge in that circuit said that he initially assigns all cases that do not have a volunteer guardian to program staff.

According to GAL program staff, they have attempted to contact judges to try to end the practice of assigning all cases to program staff.

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## Recommendations

4. The South Carolina Guardian ad Litem program should phase out the use of staff as guardians by not allowing staff to take new cases. As workload decreases, staff in the caseworker position should be reassigned to other duties within the GAL program.
5. The GAL program should continue to ask judges who assign all cases to program staff to cease this practice, and, when possible, staff should decline to take cases that will strain program resources.

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## Performance Measures

The Guardian ad Litem (GAL) program needs improvement in reporting its performance to the Governor, the General Assembly, and the public. Agencies and departments of state government must submit an annual accountability report to the Governor and General Assembly. The report must contain the agency's mission, objectives to accomplish that mission, and performance measures to show the degree to which objectives are met.

The GAL Program's key strategic goal is to increase the quantity and quality of volunteers recruited, trained, and retained to advocate for children in Family Court. The program aims to provide volunteer advocates for 90% of child abuse and neglect cases. However, the program does not report its progress toward these goals.

In its FY 04-05 and FY 05-06 accountability reports, the GAL program reported actual results for the following measures:

- Number of children served.
- Number of volunteers.
- Number of new cases.
- Number of closed cases.

The FY 03-04 report included the number of cases not staffed due to an inadequate number of volunteers. The results reported do not give adequate information about the program's progress toward its goals.

More appropriate measures would include the number of volunteers trained, sworn in and retained for each fiscal year. The program should also provide data on its progress toward providing volunteer advocates for 90% of the cases. In FY 05-06, the GAL program provided guardians for approximately 51% of the cases.

Without performance measures that are targeted to the program's goals, the Governor, General Assembly, and public are unable to determine if the program is fulfilling its mission. This could affect the resources made available to the program and its ability to serve children.

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## Recommendation

6. In its annual accountability report, the South Carolina Guardian ad Litem Program should report data on key performance measures that provide information on the program's progress toward its goals.

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## Policy on Prioritizing Cases

The GAL program does not have a comprehensive policy for determining which cases should have priority when there are not enough volunteers to staff the cases. Without clear guidelines, program staff may be inconsistent and could make case decisions that are not based on appropriate priorities.

The GAL best practices manual lists some reasons that cases may be rejected by the program:

- Extent of Department of Juvenile Justice (DJJ) involvement.
- Distance of child or parent's placement from county of origin.
- Case involves same county DSS caseworker or family of DSS caseworker.
- Case involves GAL staff family member or volunteer family member.
- General conflict of interest.

However, these reasons do not address what to do when there are several cases that do not involve the listed situations and there are not enough volunteers. According to some coordinators, if several cases come in at one time, they rank the cases. The program director and coordinators suggested several different criteria that would be used for ranking:

- Prefer cases where child is in foster care instead of still at home.
- Prefer cases where child is under one year old.
- Prefer cases for which DSS does not already have a proposed resolution.

The state policy must be clear if it is to be applied consistently throughout the counties. Also, a policy based on data about risk to children or potential benefits from guardian interventions would be defensible if challenged. For example, the program could obtain and evaluate data about the demographics and circumstances under which harm to children is most frequent.

The program director stated that the program cannot defend rejecting any category of case because it would be in opposition to the program's mission. Therefore, the state does not have an official policy on triaging cases. However, because of lack of volunteers, counties have implemented their own policies. These policies may or may not be consistent throughout the state.

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## Recommendation

7. The Guardian ad Litem Program should develop a comprehensive case priority policy.

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## Attorney Guardian ad Litem Training

When volunteers are not available, judges appoint attorneys to serve as guardians ad litem. They are appointed involuntarily from a list of those eligible. Each appointment year, the list is developed by the S.C. Bar. The appointed attorneys are not required to have any specialized training or experience in abuse and neglect cases. Some children may receive an inadequate level of service because attorneys appointed as guardians may not be motivated or have the necessary training or time to perform their responsibilities adequately.

South Carolina Code of Laws §20-7-121 instructs the Guardian ad Litem Program to train all volunteer guardians. However, attorneys appointed as guardians are not within the program's domain. Although appropriate training is required by federal law, S.C. has no statutory training requirements for attorneys appointed as guardians in child abuse and neglect cases. Private guardians ad litem retained for custody cases, who are not under the jurisdiction of the GAL program (see p. 3), are required by law to have six hours of family law continuing legal education in areas of custody and visitation in order to serve.

The federal Child Abuse Prevention and Treatment Act (CAPTA) requires that attorneys or court-appointed special advocates who are appointed as guardians ad litem receive training appropriate to their role (42 U.S.C. §5106a(b)(2)(A)(xiii)). The U.S. Department of Health and Human Services (HHS) Administration for Children and Families released a CAPTA technical assistance bulletin stating that by June 25, 2004, “there should be no appointment of a GAL for a child who has not, before their appointment, received ‘appropriate’ training that is specifically related to their role as the child’s court-appointed representative.” The HHS Child Welfare Policy Manual asserts that the specifics of each state’s plan may vary as long as the guardian is trained before she is appointed to represent a child.

The Children’s Law Center (CLC) at the University of South Carolina publishes a guide for lawyers appointed in child protection cases. It presents a timeline for hearings in child protection cases and a reprint of guidelines for guardians ad litem produced by the South Carolina Bar. The guidelines state that appropriate training or experience for the guardian ad litem would include:

- The court process and relevant statutes.
- Interviewing techniques, report drafting, record keeping, negotiation skills, and investigation skills.
- Lawyer/guardian ad litem roles.
- Cultural, ethnic and social difference.
- Social, emotional, physical, developmental, education, vocational and psychological stages and needs of children.
- Services and benefits available for children (i.e., school related issues; special education; health care issues; and government benefits).
- Role and procedure of relevant agencies.

Attorneys in South Carolina can be appointed by judges to represent indigents in a variety of cases. Attorneys can be appointed as guardians ad litem upon admission to the bar. It is the only appointment allowed for an attorney who has been admitted less than one year and has not completed South Carolina Appellate Court Rules §403 requirements. Rule 403 addresses a series of trial observations an attorney has to complete before appearing as counsel in a case before a court in South Carolina. Although required by federal law, South Carolina currently has no training requirements for attorneys to be appointed as guardians. According to several judges, they prefer the trained GAL program guardians to attorney guardians because the volunteers tend to be more competent.

In 2007, the Children's Law Center began offering continuing legal education (CLE) in abuse and neglect law in each judicial circuit. This series of trainings is sponsored by grants from the Office of Court Administration and the S.C. Bar Foundation. The CLEs are free and contain information on child development and interviewing, practice points, legislative and case law updates, ethical issues, multidisciplinary services, multicultural issues, indicators of abuse, and an abuse and neglect procedural overview. As of June 30, 2007, 61 attorneys attended training in the 5<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> judicial circuits. However, clerks of court selecting attorneys for appointment as guardians would not have knowledge of which attorneys have attended these sessions. There is no mechanism to ensure that these specially trained attorneys take precedence over others in appointments as guardians ad litem.

If the S.C. Supreme Court amended its rules to require specific training in abuse and neglect cases, there would be better assurance that attorneys appointed as guardians would have the knowledge and skills needed. At a minimum, clerks of court could obtain and distribute information about CLC services to attorneys appointed as guardians and/or the CLC could furnish the names of attorneys completing the CLE courses to the courts. Another option to enhance the training of attorneys appointed as guardians could be to include resources about guardian appointments in the S.C. Bar's "Bridge the Gap" course which all new attorneys are required to attend.

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## Recommendations

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8. The Children's Law Center should continue providing continuing legal education for attorneys appointed as guardians ad litem in abuse and neglect cases.
  9. The South Carolina Supreme Court should amend its rules to require specific training in abuse and neglect cases for newly admitted attorneys.
  10. For each appointment year, the Office of Court Administration, in conjunction with the S.C. Bar and the Children's Law Center, should develop a list of lawyers appropriately trained in abuse and neglect law, and provide that list to the clerks of court.



# Program Operations and Management

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## Guardian ad Litem Program Supervisory Authority

The statutory authority of the Guardian ad Litem (GAL) program to supervise volunteer guardians is unclear. It is uncertain whether the program has the authority to dismiss guardians who do not follow program guidelines.

S.C. Code §20-7-121 states that the GAL program is to “provide training and supervision” to volunteer guardians ad litem. However, the statute does not clarify the extent of the GAL program’s supervisory authority, and this has led to litigation that has been costly to the program. Currently, the courts have the authority to appoint and remove guardians ad litem from cases.

The GAL program has policies for the management and supervision of volunteers. These policies list reasons why the volunteer guardian might be asked to resign from the program, including:

- If the guardian takes action without program or court approval which:
  - Endangers a child.
  - Is outside the role, duties, or power of the volunteer.
  - Violates program policy, practice, court rule or law.
  - Violates the program volunteer agreement or guidelines.
  - Contravenes program or court discretion.
- If the guardian initiates ex-parte communication with the court (that is, when one party to a case engages in discussion with the court outside of the presence of the other party).
- If the guardian breaches confidentiality.
- If the guardian fails to demonstrate an ability to effectively carry out assigned duties.

When a volunteer violates these policies, the program may ask the volunteer to resign from the program, call for the volunteer’s dismissal by the court, or not assign the volunteer additional cases.

If a volunteer is asked to resign from the program and refuses, the program’s authority is unclear. The GAL program has engaged in litigation in which it has tried to have the courts remove guardians from specific cases due to the guardians’ violation of program policy. We reviewed two cases in which the GAL program asked the courts to have a volunteer removed from cases in which they served as guardians ad litem. In one of those cases, the GAL program asked a guardian who was responsible for over ten cases to reduce his caseload per program policy. The guardian instead left the program and continued to serve as a guardian, compelling the GAL program to petition the family court to remove the guardian from his cases. The other case involved a guardian who allegedly engaged in ex-parte communications with the court

and then attempted to operate as a guardian independent of the GAL program. There have been contradictory holdings by the courts in these cases, leaving the program's authority unclear.

Litigation addressing the program's authority has been costly. We estimate that the cost of staff time and payments to a contract attorney was approximately \$37,000 for one of those cases.

These lawsuits would have been unnecessary if the GAL program had the statutory authority to remove guardians from cases. Such authority would likely allow the program to remove guardians from cases in which the program determines that a guardian has violated program policy. This authority would also be in keeping with the program's statutory duty to supervise guardians ad litem.

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## Recommendation

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11. The General Assembly should amend S.C. Code §20-7-121 to give the GAL program the authority to remove guardians from cases.
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## Resources for Volunteer Supervision

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The Guardian ad Litem Program does not meet national standards for the supervision of volunteers by GAL program staff. When staff must supervise an excessive number of volunteers, they may not be accessible or able to provide timely and thorough guidance to volunteer guardians.

The National Court Appointed Special Advocate Association's (NCASAA) standards state, "For employees assigned to supervision as a full-time function, the employee will not supervise more than 30 volunteers or a maximum of 45 cases."

Additionally, the standards say that if an employee is required to perform duties other than supervision of volunteers, "the number of volunteers the employee can supervise shall be reduced pro rata." According to an NCASAA official, these standards were based on input from experienced GAL program officials around the country, and from "informal programmatic time studies of what a volunteer coordinator could reasonably do." The GAL program aspires to adhere to NCASAA standards in all areas.

As of March 2007, the GAL program had approximately 58 employees who supervise volunteers as part of their job duties. However, pursuant to their job descriptions, all of these employees have responsibilities that do not

involve volunteer supervision. Based on their job descriptions, we pro-rated the time spent on supervising volunteer guardians and determined that there were approximately 24 FTEs supervising volunteer guardians. Since there were approximately 1,246 volunteer guardians ad litem in March 2007, there were approximately 52 volunteer guardians per supervisory employee. This ratio exceeds the 30 guardians per supervisory employee ratio set by NCASAA.

The ratio of volunteers to supervising employees varied according to county. Some counties, especially those that have a small roll of volunteers, had a low volunteer to supervisor ratio, while others had very high ratios. Those with low ratios included Dorchester, which had 15 volunteers, and Marlboro, with 6 volunteers. Counties with higher ratios included Pickens, which had approximately 0.4 supervisory FTEs overseeing 64 volunteers, and Aiken, with approximately 0.7 supervisory FTEs overseeing 66 volunteers.

Staff who supervise large numbers of volunteers may not be able to provide the comprehensive guidance and support that can improve volunteer retention and quality of services.

While some supervisory ratios could be improved by shifting staff when attrition occurs, the overall high volunteer/supervisor ratio is due to a lack of adequate supervisory staff for the GAL program. The program would need additional resources to ensure that volunteer supervision is adequate.

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## Recommendations

12. When staff attrition occurs, the GAL program should shift positions to counties where the need for more supervisory resources is greatest.
13. The GAL program should request and the General Assembly should authorize funding for personnel to adequately supervise the volunteer advocates for children in abuse and neglect cases.

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## Provision of Legal Services

We reviewed the GAL program's process for obtaining legal representation for its volunteer guardians. Over the past two years, the program has obtained additional resources to compensate attorneys who represent the guardians in court. According to staff, this allows them to provide more consistent and experienced representation. However, the program should take action to ensure that it compensates attorneys consistently based on workload.

When the volunteer guardians appear in court, they are entitled to legal representation. In the past, when the program had less funds to pay for representation, it depended on attorneys appointed by judges from those available on general lists of eligible attorneys (see p. 14). These attorneys may not have appropriate training and experience. Since at least FY 03-04, the program has obtained federal funds for attorney compensation (see p. 4). According to the GAL program director, these funds allowed them to obtain contracts for attorneys to represent guardians in the counties with the most hearings. For FY 06-07, the program obtained a one-time grant from the South Carolina Bar Foundation for \$150,000, which enabled it to obtain contracts for legal representation in additional counties. For FY 07-08, the program will receive an additional \$360,000 from the Commission on Indigent Defense to use for attorney compensation.

For FY 06-07, 36 of the 45 counties in the program had contracts with attorneys to represent volunteer guardians in court for a total contract amount of \$324,000. The individual contracts ranged in amount from \$500 to \$35,000. Based on the program's data on the number of hearings conducted (including those that were continued), the average amount paid for each hearing was around \$55. This is significantly less than the \$100 per hearing suggested by Rule 41 of the South Carolina Rules of Family Court.

Although the GAL director stated that she used the number of hearings in each county in FY 04-05 to determine the amounts of the individual contracts, the data available did not confirm this. Based on the data cited by the director, we found that the amounts per completed hearing varied from \$33 to \$174 for contracts in different counties. While a rigid formula might not be desirable and the workload for the coming year could be difficult to predict, it is important that the program use its funds to compensate attorneys equitably based on workloads.

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## Attorney Compensation Supplements

We identified two counties where the attorneys who represent volunteer guardians ad litem in court receive compensation from private groups that provide support to the GAL program. In Spartanburg and Greenville counties, these "friends" organizations regularly supplement the pay of the attorneys who have contracts with the program. According to officials with these organizations, these supplements are approximately \$2,500 a month. As these private organizations are independent from the program, they were not in the scope of our review.

The program furnished contact information for 10 friends groups and foundations organized to support 12 county GAL programs. According to the GAL director and representatives of these organizations, they provide support in a variety of ways. In addition to providing compensation for attorneys, individual organizations provide funds for volunteer recognition events, training, supplies (such as paper, postage, and cleaning products), and recruitment materials. They also may provide school supplies and gifts for the children served. According to the program director, she does not consider potential payments from the friends groups when she determines the amount of the program's contracts with the attorneys. She stated that the program's compensation is less than the \$100 per hearing suggested by the South Carolina Rules of Family Court.

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## Recommendation

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14. The GAL program should base its allocation of funds for compensating attorneys who represent volunteer guardians on workload in each county.
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## Quality Control Process

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The GAL program did not have a comprehensive quality control process to ensure that employees and volunteers follow program policies for managing children's cases. A quality control process allows managers to obtain information about whether program policies are being effectively applied. Beginning in spring 2007, the GAL program is implementing a policy for file audits which should be beneficial and improve program accountability.

According to staff, over the years, the program has periodically conducted audits of its files. The regional coordinators were responsible for auditing the files of the counties they supervised. However, these reviews were not formal and did not require any response from the county staff. We requested documentation for all of the audits completed in FY 05-06 and FY 06-07 and received no evidence for any audits that were conducted prior to March 2007.

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## New Policy

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In 2007 the program added a policy for file audits to its Best Practices Manual. The policy requires the three regional coordinators to visit each office in their areas at least every other month, and, at each visit, to sample 25 files for specific items that should be in the files. For example, these items could include:

- Court orders.
- Volunteer court reports.
- Monitoring reports with date of face-to-face contact with child(ren).
- Current child placement.

The policy requires the regional coordinator to write a written report with the results of the review. We reviewed all reports of audits conducted from March through mid-June 2007. There were reports documenting that the program conducted audits in 29 of its 45 counties. We also reviewed responses from nine county or circuit coordinators. Although no response is required by the policy, according to the GAL program director, they are now making responses part of the process.

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## Suggestions for Policy Improvement

We noted some areas in which the audit policy could be improved. First, while it is important that a quality control process have provision for monitoring conditions regularly on an ongoing basis, the current policy's requirement that the coordinators conduct audits every other month in each county appears excessive. As one coordinator pointed out, if the audits are done so frequently, the coordinators will be seen by program staff as primarily auditors, because most of their time would be devoted to auditing instead of coaching, consulting, or observing. Also, the GAL program has limited resources for staff and volunteer supervision (see p. 18). The need for regular monitoring of program files could be met by conducting the audits specified in the policy twice a year.

Also, we noted that some of the audit reports did not provide specific feedback to the staff being reviewed. While many of the reports were quite detailed and identified the cases where there were problems, other reports were more general and identified problems without giving specific feedback that would enable the staff to confirm and correct the issues. It would also be beneficial for the policy to require a written response from the coordinators whose files are audited. This would give them a chance to accept or disagree with the audit findings and to specify what corrective measures they had implemented.

The audit reports we reviewed identified issues needing attention by the program staff. Some of them identified cases where volunteers had not been meeting with their children as required. According to one of the regional coordinators, she has learned more about her counties from looking at the files, and it has helped her to get program staff to focus on issues that need attention. The audit reports made suggestions to staff for program improvements, and the staff responses reported corrective action taken. A strong audit process can help improve program accountability.

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## Recommendations

15. The GAL program should amend its file audits policy to require that audits be conducted at least twice a year.
16. The GAL program should amend its file audits policy to require that audit reports be specific in identifying problems with the files and to require a written response from the county staff audited.
17. The GAL program should fully implement its policy for file audits and ensure that all counties are audited as required.

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## GAL Program Database

The GAL program has not maintained reliable data about program activities. The program uses an information system called CASA Outcomes, Management & Evaluation Tool (COMET) that was designed by National CASA specifically for GAL programs. The system maintains and tracks information on abused and neglected children and the volunteers who advocate for them in the court system. The program uses the system to manage cases and to generate reports to evaluate program results.

The GAL program does not have adequate controls to ensure that data in the system is complete or accurate. Data entry is a primary concern. Data is entered into the system manually by staff in each county. The data entry requirements are extensive and detailed. For example, the program tracks information on each child in seven main areas:

- Demographics, siblings, and initial case information.
- Family members' contact information and issues/concerns.
- Case worker, attorney, and other "interested people."
- Hearings, including status, dates, and outcomes.
- Case plan, including placements, services, and visitations.
- Volunteer activities and reports.
- Case closing, including reason and final placement.

The program also tracks detailed information about the volunteers who act as advocates. All of this data must be entered by staff and regularly updated. The GAL program does not have a clear policy on which staff are responsible for entering the data and reviewing the data entry function.

The program has made some efforts to control data quality. The state office data coordinator conducts training on the system regularly, there is a written instruction manual, and the data coordinator reviews data from the counties and responds with error reports on a regular basis. The program has a policy

for conducting COMET audits; however, according to the program director, they do not have the resources to implement this policy.

Some counties have not maintained adequate records of program activity in the system. It is evident that not all staff have given the same priority to data entry. Also, staff vacancies can impede accurate and complete data collection. Some GAL employees may think that it is more important to spend their time improving advocacy for children than to enter data about the cases. However, without reliable information about program results, management is handicapped in its ability to identify priority areas for improvement. Also, the General Assembly and the public may not have an accurate picture of program activities and results.

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## Recommendation

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18. The GAL program should assign primary responsibility for data entry to specific employees in each county and implement consistent policies and procedures to ensure complete and accurate data collection.
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## Use of Time-Limited Positions

The majority of the staff of the South Carolina Guardian ad Litem program are employed on a time-limited basis. The use of time-limited positions for the program is inappropriate and may hinder its efforts to recruit qualified employees.

South Carolina law allows for the use of time-limited employees. According to the Budget and Control Board's Office of Human Resources (OHR), time-limited positions are non-FTE positions established to perform work on time-limited projects. OHR defines time-limited projects as "specific work products or services provided by one state agency to another state agency, local government, or other public or private entity over a specified time period as a contractual arrangement between the agencies." Employees in time-limited positions may receive benefits, such as leave and health insurance.

The GAL program has 22 FTE positions and 56 time-limited positions. The program's time-limited employees are not employed to work on time-limited projects. Rather, their function of recruiting, training, and supervising volunteers is ongoing. We identified 16 time-limited employees who have worked for the program since 1999. The use of time-limited employees for the program does not fit the criteria for time-limited positions as set forth by



OHR. Officials with the Governor's Office, OHR, and the GAL program agree that the program's employees should not be classified as time-limited.

The time-limited status of the Guardian ad Litem program employees could harm efforts to recruit staff. Prospective employees could be affected by the disadvantages of accepting a time-limited position.

- Time-limited positions appear to be temporary.
- Time-limited employees are not entitled to annual cost of living adjustments.
- Time-limited employees do not have grievance rights.
- Time-limited employees are employed at will.

Obtaining FTEs would not result in increased costs because the time-limited staff at the GAL program already receive benefits.

Officials with the Guardian ad Litem Program and the Office of the Governor could not furnish information as to why the program originally began using the time-limited positions. The Office of Human Resources has continued to approve the renewal of the time-limited positions for the program. The GAL program has not formally asked for more FTE positions, but the program's director stated that she will request FTEs in the FY 08-09 budget process.

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## Recommendation

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19. The Guardian ad Litem Program should request and the General Assembly should grant FTE positions for the program's permanent employees.
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## Program Operations

In FY 04-05 and FY 05-06, the GAL program's expenditures for operations were 26% and 23%, respectively, of its total expenditures. The program has a central office in Columbia and 34 offices around the state for the 45 counties that it serves. Although some of its offices are provided rent free by local government, most are leased from private parties. We reviewed the location of the program's offices and its expenditures for office space, and did not identify any problems. The GAL program has attempted to minimize operating expenditures. However, the program could improve its inefficient distribution of supplies.

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## Distribution of Supplies

The GAL program's method of distributing supplies to local offices should be changed. For FY 04-05 and FY 05-06, program expenditures for supplies and materials, including printing and postage, averaged \$48,000 annually. The program currently requires all supplies to be ordered through, and delivered to, its central office in Columbia. When staff from around the state come to Columbia for staff meetings once every two months, they are required to pick up their supplies and deliver them to their offices. According to staff, this method requires staff to carry heavy loads or recruit assistance from others. They also have to wait for the supplies to be loaded after the staff meetings. In some cases, when staff cannot attend a meeting, the staff who do attend might have to deliver supplies to other counties in their circuits. The time and effort staff spend on delivering supplies could be used more appropriately to advance the program's mission.

The state's agency mail services (AMS) is one option for supply distribution that could help the program at minimal expense. The GAL program currently does not use AMS. Agency mail provides service to the entire state in a cost-effective manner. AMS delivers bulk mail, such as supplies, for \$.50 per pound, compared to the U.S. Postal Service rate of \$3.94 per pound. According to AMS staff, they could deliver directly to most of the GAL program offices. Because some of the GAL offices have just one staff person, all of the offices may not have staff present during the entire work day to receive deliveries. In these cases, AMS could deliver to another nearby location in that county from which the GAL program could pick up the supplies. Using AMS would allow the program more flexibility in distributing supplies when needed. Also, the program could use AMS for other mail between agencies. The GAL program regularly communicates with local DSS offices, which already participate in AMS.

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## Recommendation

20. The Guardian ad Litem program should use agency mail services and discontinue its current process of having program staff deliver office supplies.

# Agency Comments

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Comments from the Guardian ad Litem program follow.

The Office of Court Administration and the Children's Law Center reviewed pp. 14-16 of the report and elected not to submit comments for publication.

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## Appendix

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# State of South Carolina

## Office of the Governor

MARK SANFORD  
GOVERNOR

OFFICE OF EXECUTIVE  
POLICY AND PROGRAMS

October 19, 2007

Mr. George L. Schroeder, Director  
South Carolina legislative Audit Council  
1331 Elmwood Avenue, Suite 315  
Columbia, SC 29201

Dear Mr. Schroeder:

Thank you for the opportunity to include these final comments from the South Carolina Guardian ad Litem program to the report issued after the audit conducted by the Legislative Audit Council. The program wishes to thank the audit team, led by Deputy Director Jane Thesing, for its diligence in fully exploring the complexity of the Guardian ad Litem program. It is hoped that the information provided through the audit will contribute to the furtherance of the mission of the program to provide volunteer advocates for abused and neglected children.

The South Carolina Guardian ad Litem program has a definitive purpose: to recruit, train and supervise volunteers for appointment in family court as special advocates in cases of child abuse or neglect that have been brought to court by the Department of Social Services. While the mission is specific, the charge is complex and requires a broad spectrum of skills and abilities from the staff and the volunteer advocates.

The South Carolina Guardian ad Litem program is statutorily mandated and operates within the Governor's Office. The program is accountable to the General Assembly, including fiscal responsibility, and is subject to the authority of the judiciary, whose power to appoint the special advocates, is absolute. The Guardian ad Litem program's existence is required by federal statute – the Child Abuse Prevention and Treatment Act (CAPTA) - and the South Carolina program is an affiliate in substantial compliance with the best practice standards for child advocacy as developed by the National Court Appointed Special Advocates Association (NCASAA).

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Despite the inherent challenges in complying with accountability to many entities, the accountability is not unwelcome. The Guardian ad Litem program recognizes that ultimately, the volunteer guardians ad litem fielded by the program hold the lives of abused and neglected children in their hands. Although not solely responsible for the welfare of these vulnerable children, nevertheless our volunteers are mandated to supply information to the family court bench necessary for well-informed decisions in child abuse and neglect cases. The staff and volunteers are always mindful that the greatest accountability is to the children for whom we serve.

This awareness promotes a readiness to conform to standards that promote the best interests of children. In the response to the subsequent recommendations, we hope it is apparent that the South Carolina Guardian ad Litem program is working diligently to meet its mandate; however, overlapping and evolving accountabilities have at times made it difficult to do so.

The following answer to each of the recommendations made in the LAC audit report attempts to contribute to resolution where conflict exists as to how the program should best be managed.

Recommendation 1 is to eliminate the 2% funding the Guardian ad Litem program receives through interest generated on overpaid income taxes. Although the program requested in its 2007-2008 budget that this fund be capped at one million dollars and the additional funds replaced with state appropriations, the same request is not being made for 2008-2009. The 2% funds are variable with no discernable pattern. Careful tracking over the last three years has demonstrated this. However, at a time when state revenues are reduced, these essential funds remain a source of income not easily replaced.

After repaying \$322,810 in revenue as a result of a taxpayer challenge, the Guardian ad Litem program realized 1.6 million dollars in necessary funds from the 2% funds in 2006-2007. The program simply could not have functioned without this source of revenue. In addition, the program is appreciative of the support of the General Assembly, which increased the program's state appropriation for 2007-2008 in recognition of the taxpayer challenge.

The Guardian ad Litem program is gratified that the Legislative Audit Council audit team recognizes the needs of the program for more staff and additional stable funding to meet its core mission of advocating for abused or neglected children. The program is now operating as effectively as is possible without more staff. Requests for key positions and the funds necessary to support them are a part of the Guardian ad Litem 2008-2009 budget request.

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Recommendation 2 is that the program should allocate recurring funding for at least one full-time staff position dedicated to recruiting volunteers.

In 2006-2007 a portion of the NCASAA grant funded recruitment efforts. While helpful, it became apparent that part-time efforts were not enough. A full-time Public Relations Coordinator is essential to recruitment of substantial numbers of new volunteers. In 2007-2008 the full-time Public Relations Coordinator position has been implemented using NCASAA grant funds. The Guardian ad Litem program 2008-2009 budget request would make the Public Relations position a state-funded position and use the NCASAA grant position to field additional recruitment staff, creating a recruitment team.

Recommendation 3 is to track and analyze recruitment efforts. The current full-time, grant-funded Public Relations Coordinator has designed a specific step-by-step recruitment campaign for implementation in each county. Results from the plan will be analyzed by county, region and state-wide. The program has a plan in progress to fully implement recommendations 2 and 3.

Recommendation 4 is that the South Carolina Guardian ad Litem program should phase out the use of staff as appointed guardians ad litem and disallow staff to take new cases.

As a corollary, Recommendation 5 is that the Guardian ad Litem program should ask judges who assign all cases to staff when volunteers are not available to cease this practice and decline acceptance of new cases to staff.

The LAC auditors determined that their reading of S.C. Code Ann. § 20-7-121 (Supp. 2006) precludes staff serving as the appointed guardian ad litem. The program has had a policy of requiring Coordinators and Case Managers to take at least one case in order to fully understand the process of volunteering as the guardian ad litem in an abuse or neglect case. However, for over seven years the program has asked staff to forego accepting cases where possible except in accordance with NCASAA established best practice standards. The program understands and accepts that when staff members are overly committed to performing the duties of direct advocacy, the required duties of recruitment, training and supervision cannot be done appropriately. The program further understands the cyclical nature of the LAC auditors' concern in this regard.

The number of staff cases by year cited in the audit report point out a decline in each year from 2005 through 2007. The LAC auditors reference one staff member having 52 cases in 4 counties in 2006-2007. What is not made clear is that in the circuit where the data originated, staff is initially appointed to all cases

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as an administrative act and the cases are then re-assigned to volunteers. The cases therefore show up in the COMET database as assigned to the staff member, but are not an accurate reflection of the staff member's actual caseload.

The program has recently requested that the family court judges in the 8<sup>th</sup> Circuit appoint an attorney to serve as the guardian ad litem when no volunteer was available. The request has been denied. All abuse and neglect cases filed must be assigned to either a volunteer or program staff in the 8<sup>th</sup> Circuit. In the 1<sup>st</sup> Circuit, one judge requires that the program accept all appointments through the Merits Hearing. The program may then petition the court for assignment to an attorney, if the staff or a volunteer cannot continue to monitor the case. This arrangement may allow the county program to moderate its overflow of cases and provide the Court with essential information for the important Merits Hearing; it does not provide the child in the case with a consistent advocate upon whom he or she may rely.

These types of requirements result in opposing demands being made upon the Guardian ad Litem program. The LAC audit has determined that staff assignment is inconsistent with the statutory framing of the program. The judiciary has asserted that it disagrees with this conclusion and that program staff may and, at times, must take cases.

In an attempt to navigate opposing requirements, the goal of the South Carolina Guardian ad Litem program has been to recruit volunteers in sufficient numbers to have a qualified volunteer advocate available for every child who needs one. As hard as we have worked to do so, escalating demands for advocates and increasing case complexity have frustrated attempts to field enough volunteer guardians ad litem. The program needs additional staff resources to recruit, train and supervise a larger volunteer force.

The Guardian ad Litem program is therefore calling upon our legislators and judges to resolve the conflict between two mutually exclusive demands being placed upon the program. If staff may or must take cases, the program will have to grow its staff significantly. It is not safe for children to have advocates assigned to excessive numbers of cases, especially if those advocates have other assigned duties. The duties and responsibilities of volunteers far exceed appearing in court and are, when properly performed, labor intensive.

If the position of the LAC audit that staff is statutorily prohibited from taking cases is endorsed by the General Assembly, then the program needs legislation to clarify a legislative intent that appointments cannot be made to staff or that staff may carry caseloads only at a limited level.



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The Guardian ad Litem program will continue to search for every method to fulfill the needs of abused and neglected children who require and are entitled to an advocate. The Circuit Case Worker position, which is dedicated to performing direct advocacy at a level capped at fifteen cases, is one innovative approach to meet the needs of abused and neglected children while the program tries to recruit enough volunteers. Meant to bridge the gap between the need for advocates and the lack of volunteers, the Circuit Case Worker position is designed to eventually be transmuted into a recruitment and training staff position. This would occur upon there being enough volunteers to accept the cases. Development of an entirely new type of position and its evolving nature are indicative of the commitment of the program to meet its mandate to advocate for children.

No matter how hard the program tries it cannot resolve mutually exclusive demands from two branches of government – we cannot reduce or eliminate staff cases and at the same time insist staff take all appointments that cannot be assigned to a volunteer. The Guardian ad Litem program is asking for clarity regarding what is expected of the program in the matter of appointment of program staff to cases.

Recommendation 6 is that the South Carolina Guardian ad Litem program report on key performance measures and progress toward its goals. The 2006-2007 Accountability Report expands performance measure reporting and the progress the program has made toward its goals. The program will continue to refine this ongoing process.

Recommendation 7 is that the South Carolina Guardian ad Litem program develop a comprehensive case priority policy, when cases cannot be assigned. At present the best practices policy manual lists several reasons that the program would not assign a volunteer, as noted in the LAC audit report. The primary reason for not assigning a case within the program, outside of a legal conflict, has always been due to having no available volunteer. It is unconscionable to reject a case because of its complexity, DJJ involvement, or for any reason other than that there is no qualified advocate who may be assigned. Children embroiled in complex cases need an active advocate more, not less. However, as noted by the audit report, some county program personnel have been faced with the dilemma of an influx of cases at a moment when some, but not all, cases may be assigned to a volunteer. The Guardian ad Litem program will more clearly develop policy guidelines upon which staff may rely in order to determine which cases should receive priority assignment.

Recommendations 8, 9, and 10 have serious impact for the abused and neglected children which the South Carolina Guardian ad Litem program serves. These recommendations are for attorney training for any attorney appointed as the guardian ad litem in an abuse or neglect case. The program agrees with the LAC recommendations, but has no authority to enact them. The Guardian ad Litem program will continue to support the efforts of Court Administration and the Children's Law Center as they work together to provide education to attorneys in this arena.

Recommendation 11 states that the General Assembly should amend S.C. Code Ann. § 20-7-121 (Supp. 2006) to give the Guardian ad Litem program the authority to remove guardians from cases. The program recognizes the authority of the judiciary to appoint and remove guardians ad litem; however, the program needs to have a better and more time-sensitive mechanism to remove volunteers both from the program and from cases when, for example, the volunteer's actions are in opposition to the best practices of child advocacy and the rules of the court. The program has suggested that legislative change to grant the Guardian ad Litem program the right to intervene in cases would be helpful. The right to intervene does not disturb the appointment power of the judge, but allows for the program to alert the Court to actions by a volunteer that are either outside of the appropriate scope of the volunteer or in contradiction to the volunteer's duty to act in the child's best interest.

Recommendations 12 and 13 call for the program to shift positions as available to meet the NCASAA standard of 30 volunteers or 45 cases per case management staff and request more personnel for adequate supervision from the General Assembly.

There are no positions within the program that should be moved at this time. Where the ratio of volunteer number to case management staff appears lower, the true need is to increase the volunteer count in order to meet the needs of more children.

In the 2008-2009 Guardian ad Litem budget request additional hours for existing staff and additional positions are proposed. Along with the case management personnel needs, the budget addresses the need for dedicated data entry personnel as recommended by the LAC audit in Recommendation 18. The 2008-2009 budget request also seeks funding for increased personnel for staff supervision and support. This would make it possible for the Guardian ad Litem program to ensure enactment of Recommendations 16 and 17. These two recommendations are that the program strengthen its audit policy to require

specific identification of file problems and written responses from the county staff and that the program follow this strengthened policy. Recommendation 15 is that the program reduce its current policy of auditing a small portion of the files every other month to twice yearly file audits. The senior staff of the program disagrees with this recommendation and believes that the smaller, more consistent file audits are less time-consuming for our small senior staff and less difficult for the county staff to manage when corrections are required. Recommendations 15, 16, 17 and 18 were discussed before Recommendation 14 because they are all addressed in some fashion through the 2008-2009 budget request for additional personnel.

Recommendation 14 calls for compensation to county program contract attorneys based on the workload. Seven attorney contracts within the program have existed and been funded through IV-B funds passed through DSS for approximately seven years. How the amounts of these contracts were originally determined is not documented in program records. These seven contracts have experienced little change over the years and, in general, compensate the attorneys well below \$100 a hearing. In 2006-2007 the Guardian ad Litem program wrote a grant proposal to the South Carolina Bar Foundation for IOLTA funds (Interest On Lawyers' Trust Accounts) in the amount of \$350,000. Each county was analyzed for the number of hearings held and the number of hearings was multiplied by \$100, the amount specified by Rule 41 for compensation to attorneys serving as counsel for guardians ad litem. The IOLTA award was for \$150,000. By necessity contract amounts had to be severely curtailed. To the credit of the identified attorneys willing to assist the county Guardian ad Litem programs, these attorneys accepted the reduced contractual amounts for the one-year period. For 2007-2008 the General Assembly directed \$360,000 of funds from the Office of Indigent Defense for use by the program to pay contracted attorneys. These contracts are each based on the \$100 per hearing held as analyzed by county.

The program agrees with Recommendation 19 that South Carolina Guardian ad Litem staff positions should become FTE positions for all the reasons stated in the audit report. The 2008-2009 budget request includes this item.

Recommendation 20 of the LAC audit report is that the Guardian ad Litem program use agency mail services and discontinue having program staff deliver office supplies. Through a variety of arrangements with state contractors and vendors, the program has already accomplished direct delivery of supplies to the 34 county offices.

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Throughout the period of the audit conducted by the Legislative Audit Council, the South Carolina Guardian ad Litem program has tried to maintain an attitude of transparency. The audit process has assisted the program in recognizing areas that could be improved. The process has affirmed and directed the program's requests for additional resources to carry out its mission.

It has been gratifying to find that the services of the volunteer guardians ad litem are recognized and valued by our family court bench and that the volunteer advocates are relied upon as capable and well-trained in their role as spokesperson in court for abused and neglected children.

The mission, as stated at the beginning of these comments, remains focused: the South Carolina Guardian ad Litem program exists to recruit, train and supervise volunteers to act as court-appointed special advocates in family court proceedings of child abuse or neglect. The program does not wish to fail the citizens or government of South Carolina and will use the audit report to improve our performance. This resolve is nearly as strong as our individual and collective commitment to provide support and advocacy to the children whom we must not fail. Thank you for including this response with the report. We look forward to continuing to use the information produced by the audit as a tool to enhance our child advocacy.

Sincerely,

A handwritten signature in dark ink, appearing to read "Louise B. Cooper", written in a cursive style.

Louise B. Cooper  
State Director

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